IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.9944 OF 2004

Sewri Land Co.Pvt.Ltd. ...Petitioner.

Vs.

Badelal Tilakdhari. ...Respondent.

.....

Mr.H.Mansukhani for the Petitioner.

Mr.A.G.Toraskar for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

April 13, 2005.

P.C. :

Rule, by consent made returnable forthwith. Respondent waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

The Small Causes Court has, by its impugned order dated 5th October 2004, rejected an application for amendment under Order 6 Rule 17 of the Code of Civil Procedure, 1908. The Petitioner

has filed a suit for eviction on the ground of non-user and arrears of rent. In paragraph 5 of the Plaint there is the following averment :

> "5. The Plaintiffs state that the defendant with a view to sub-let, assign and part with possession of the suit premises to a third party is in the process of putting up illegal permanent structures in the suit premises. The Defendant has for the purpose brought construction material like sand, cement, etc. on the suit premises and the adjoining open plot which has also been let out to him. The Plaintiffs state that they have caused some photographs to be taken at the site of the suit premises on 4-2-1997 and shall refer to and rely upon the same when produced."

An amendment was moved for correcting the date in para 5 of the Plaint from 4th February 1997 to 4th February 1998.It was stated that the date 4th February 1997 is a typographical error.Prima facie it would appear that the date 4th February 1997 is a typographical error.The suit was instituted on 6th February 1998 and the averment in para 5, which contains the case of the Petitioner is that the defendant has for the purpose of illegally

subletting the premises brought construction material at the site with a view to putting up an illegal permanent structure. The Learned Trial Judge has rejected the application for amendment inter alia holding that photographs have not been proved in evidence. That is a separate matter which relates to evaluation of evidence. At this stage, the amendment has to be allowed. In any event, no prejudice would be caused to the Respondents if the amendment were to be allowed. The Pleadings, it may be noted, were filed before the amendment to Order 6 rule 17 of the Code of Civil Procedure, 1908. In the circumstances, the Petition is allowed. The impugned order of the Small Causes Court dated 5th October 2004 is quashed and set aside. The application for amendment (Interim Notice No.3942 of 2004 in R.A.E.& R. Suit No.98/201 of 1998) filed by the Petitioner shall, in the circumstances, stand allowed in terms of prayer clause (a). Amendment to be carried out within two weeks from today.

The petition is accordingly disposed of.

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